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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2313 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAJIBEN KALIDAS

Versus

DIST SUPDT OF POLICE

Appearance:

MR IS SUPEHIA for Petitioner No. 1

Mr.A.Y. Kogje, ASSTT GOVERNMENT PLEADER for Respondent No. 1

NOTICE SERVED for Respondent No. 2

MR AR THACKER for Respondent No. 3

CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 16/10/2001

ORAL JUDGEMENT

The present petition is filed for the relief that a direction be issued to respondents no.1 and 2 to consider the case of the petitioner for promotion to the post of Ist Grade Head Constable and then to the post of Police Sub Inspector on the dates when the case of respondent no.3 was considered and if found not positively unfit for promotion, then to promote her from the dates respondent no.3 was promoted with all consequential benefits either by reverting respondent no.3 or otherwise in accordance with the Recruitment Rules and the Government instructions pertaining to Scheduled Caste issued from time to time as regards percentage and roster. The case of the petitioner is that the petitioner was initially recruited as Unarmed Constable on 4.12.1969. Thereafter she came to be promoted to the post of 2nd Grade Head Constable on 25.5.1985. Since then she has been holding the same post. It is also the case of the petitioner that respondent no.3 who is senior to the petitioner in the cadre of 2nd Grade Head Constable was promoted to the post of 1st Grade Head Constable by order dated 20.2.1989. Respondent no.3 was further promoted to the post of Police Sub Inspector on 11.11.1989.

2. So far as the claim of the petitioner on the basis of her being scheduled caste is concerned the petitioner has stated in para 9 of the petition that as per the Government Resolution dated 21.1.1986 the State Government has prescribed 11% reservation for scheduled caste candidates. It is also the case of the petitioner that in Kutch district there is not a single woman 1st Grade Head Constable or a woman Police Sub Inspector belonging to scheduled caste. Government Resolution dated 21.1.1986, a copy of which is at Annexure 'G', provides for reservation of scheduled castes and scheduled tribes only, but it does not provide any reservation for women candidates belonging to scheduled caste/ scheduled tribe separately. Thus, petitioner is labouring under a misconception.

3. An affidavit in reply is filed by one Shri P.L. Jani, District Superintendent of Police, District Kutch, wherein he has categorically stated in para 3 that,

> ".. .. case of the petitioner was duly considered by the departmental promotion committee for her promotion to the post of Head Constable Gr.I on 2nd February 1990. At the relevant time the petitioner was facing departmental enquiry for the misconduct committed by her. As the departmental enquiry is pending

against the petitioner the committee did not think it fit to promote the petitioner and it was decided to take final decision with regard to promotion of the petitioner after completion of the said enquiry. It is submitted that in pursuance of the said departmental enquiry by an order dated 30th April 1990 a punishment was inflicted upon the petitioner because the petition was held guilty of the charges levelled against her. .. .."

4. It is also stated in para 6 of the affidavit in reply that,

"It is submitted that criteria for promotion to the post of Head Constable Gr.I is seniority cum merit. It is submitted that the case of the petitioner was duly considered for her promotion to the post of Head Constable Gr.I but as she was found positively unfit for promotion, she was not promoted to the post of Head Constable Gr.I. .. .."

5. Mr.Supehia, learned advocate for the petitioner submitted that though the petitioner was inflicted punishment by order dated 30.4.1990 she was promoted to the post of Head Constable Grade I by order dated 28.8.1990. It is the case of the petitioner that she should have been promoted to the post of Head Constable Grade 'I' with effect from 20.2.1989 when respondent no.3 was promoted and thereafter she should have been promoted to the post of PSI with effect from 11.11.1989 when respondent no.3 was promoted to that post. This argument of Mr.Supehia is misconceived and misplaced inasmuch as when the petitioner's case was considered for promotion to the post of Head Constable Grade 'I' on 22.2.1989 as stated in the affidavit in reply there was departmental inquiry pending against her and she was found positively unfit for promotion. Therefore, she was not promoted. In subsequent selection when her case is considered and found fit to be promoted and promoted, that does not entitle her for giving promotion with retrospective effect from 20.2.1989.

6. No case is made out for grant of any relief as prayed for. The petition fails. Rule is discharged. No order as to costs.

(Ravi R. Tripathi, J.)
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